

## *Fathoming the Depths of Environmental Governance: Forms of Participation of A Community-Based System In The Arctic*

Margherita Paola Poto, Postdoctoral Researcher, Jebsen Center for the Law of the Sea, Norway and Lara Fornabaio, Graduate Student, University of Ferrara, Italy

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### **ABSTRACT**

The paper will investigate the dynamics of an environmental global governance perspective, where the recognition of cross-border needs (environmental protection, human rights' protection) contributes to the creation of a community framework that fulfills safety and related needs, as well as encourages pro-community behaviours. The case study will focus on the different participatory tools that have been promoting a strengthening sense of an "Arctic community." 1. The recognition of the Permanent Participants Status to non-State actors in the Arctic Council decisions; 2. The participation in the environmental decisions (with a focus on the EIAs) of the public and, in particular, of the indigenous groups potentially affected by the outcome of the environmentally-related administrative decisions; 3. The concept of a supranational network of marine protected areas (MPAs) with cross-boundary extension in the Arctic region and the need to guarantee participatory tools to all the interested parties. The community-based approach (applicable to the decision-making process and the resources management) can be applied as a flexible legal category to encompass the protection of fundamental rights, such as the protection of the natural world and of the human beings that are deeply connected to the landscape in which they live.

*Keywords:* Global, Governance, Environment, Civil Society. Forms of Participation, Arctic Region

### **INTRODUCTION**

*"The natural world is the larger sacred community to which we belong. To be alienated from this community is to become destitute in all that makes us human. To damage this community is to diminish our own existence."* (Thomas Berry)

The paper aims to identify some key features of the global environmental system of governance, where the recognition of cross-border needs (environmental protection, human rights' protection) contributes to the creation of a community framework that fulfills safety and related needs, as well as encourages pro-community behaviour. The case study will focus on the different participatory tools that have been contributing to establish and strengthen the concept of an "Arctic community," formed by States and non-state actors. It will focus on; 1. the recognition of the Permanent Participants Status to non-State actors in the Arctic Council decisions; 2. The participation in the environmental decisions of the public and, in particular, of the indigenous groups potentially affected by the outcome of the environmentally-impacting administrative decisions; 3. The concept of a supranational network of marine protected areas (MPAs) with a cross-boundary extension to the Arctic region and the need to guarantee

participatory tools to all the interested parties. The community-based approach (applicable to the decision-making process and the resources management) can be applied as a flexible legal category to encompass the protection of fundamental rights, such as the protection of the natural world and of the human beings that are deeply connected to the landscape in which they live.

The underlying idea is that in the rich stream of the global governance theory, there are two juxtaposed currents: the market and economic logic vis-à-vis the sustainability-oriented vision. The former has increasingly expanded in the last decades, to the point of collapse and has, therefore, manifested its evident signs of weakness. The latter has stealthily entered the arena of the global dynamics and has progressively earned a prominent place as an alternative angle to look at the global challenges, helping to formulate proactive solutions to the drawbacks of market-oriented globalisation.

After a brief introduction on the need to shift from a market-driven view to a sustainability-oriented outlook (which places community participation at its core), the paper will focus on different modes that played a role in shaping the Arctic Region as an inclusive platform of dialogue, where co-decision making and co-management are to be a compass towards a conscious protection of common landscapes and a fair and equitable relationship between humans and the natural world.

## **BRIEF PROLOGUE ON THE CONCEPT OF GLOBAL DYNAMICS**

### ***The advent of internet and the shift of consciousness***

The term "global" was used for the first time to explain the interconnections in the electronic world of media and should always be referred to it<sup>1</sup>. Even when talking about global dynamics applied to social sciences and then to law, this connotation is to be kept in mind. If the interactions have become global, it is because the media have changed, expanded, and acquired an inclusive attitude<sup>2</sup>.

Mark Federman depicts such a phenomenon with the very effective example of the shift of consciousness imposed on the collectivity when the media leaped from television to Internet:

The effect of the Internet is quite different from that of television. Via networked computers, instead of bringing the world into our homes, we transport ourselves from

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<sup>1</sup> Marshall McLuhan, 1964. For a thorough analysis of the global development of the communications see Meenakshi Gigi Durham, Douglas M. Kellner, Oxford, 2001, 2006.

<sup>2</sup> For a detailed analysis of the global dynamics see L. Fornabai, M. P. Poto, 2017.

our homes, and indeed from our bodies, out into cyberspace. So what is this Internet world into which we are transported? What has been created in cyberspace? What awaits us there? And more important, what transformations are occurring right now that we have not yet noticed<sup>3</sup>.

In fact, the reaction of the beneficiaries of the new media has changed since they had to become proactive actors in the information collection and sharing. This revolutionary step in the field of communication triggered a domino effect in other fields, including social sciences and law.

### **IMPLICATIONS OF GOING GLOBAL: PRELIMINARY WARNING. HOW NOT TO FALL INTO THE TRAP OF IDEOLOGIES**

A preliminary warning seems necessary to make a further distinction between global and globalisation, as the latter has often been regarded as a side effect of the sudden burst of national delimitations and borders.

Indeed, though originating from a neutral background, the first adverse effects of the distorted application of the "global dimension" have not been slow to emerge. In particular, the word "global" quickly declined to the pejorative of "globalisation," and from there, the road was short to juxtapose it to the anti-globalisation dimension. As a consequence, when speculating about globalisation, two sets of opinions, with opposing approaches, have developed. Supporters of market-oriented policies conventionally align in favour of globalisation, while, the anti-globalisation front, is lined-up with proponents of the sustainable development model<sup>4</sup>.

The metamorphosis of the word "globalisation" and its rapid spread to the realms of the market-driven forces, as well as of the opposing environmentalists, have been brilliantly caught by David A. Sonnenfeld and Arthur P.J. Mol:

Globalization became a fashionable catchword beginning in the late 1980s. Today, one can hardly imagine the term not being an integral part of the vocabulary of the many politicians stressing the need to eliminate regulations to make national industries more competitive or favoring the protection of national cultures, environments, and economies from global assault. It is equally difficult to imagine the representatives of large transnational corporations and multilateral economic institutions not referring to globalization when demanding liberalization, privatization, and the lifting of protective measures. A decade ago, a wide variety of environmental non-governmental organizations (e-NGOs), trade unions, Third World and Fair Trade groups, and others were able to come together under the loose umbrella of "sustainable development";

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<sup>3</sup> Mark Federman, 2006, p. 5.

<sup>4</sup> See Manfred B. Steger and Erin K. Wilson, 2012, 439-454.

however, they were unable to identify a common target for their concerns. More recently, they joined forces in Seattle and elsewhere under the banner of anti-globalization. All of this suggests the rapid dissemination of both the idea of globalization and its antonyms<sup>5</sup>.

For the present work, we will, therefore, remain faithful to the nuance of "global dimension," rather than referring to the globalisation phenomenon. This is because we aim to look at the global dynamics from a neutral perspective, well aware that the virtuous mechanisms they generate can be easily be applied for the benefit of sustainable development. There are positive implications in looking at the global dimensions, and they have been acknowledged and categorised by scholars.

Helmut Anheiner and Nuno Themudo have labeled them under the common term of reference of "opportunities" and have therefore listed them according to the following outline<sup>6</sup>:

- The "new world order" set up after the end of the Cold War has been pushing for the global spread of liberal economics and democratic governance, which emphasizes a bottom-up approach and facilitate the engagement of the civil society in the decision-making process;
- The cost of communication has dropped dramatically, increasing information-sharing and easy access to relevant data;
- The circulation of democratic models has had a remarkable spinning effect on the enhancement of regulatory models where freedom of expression and association are now granted in most countries all over the world.

As observed by Anheiner and Themudo, going global had implied the creation of an organisational space. Together with this exists a recognition of cross-border needs (environmental protection, human rights) and the opportunity to strengthen a concept of a community-based approach where those needs are protected thanks to the contributions of the community members.

These implications (further developed in the next paragraphs) have deeply impacted the dynamics of the legal realm. The consequences are multifold and can be listed looking at the change of the actors and their interconnections, at the areas where the actors play and at the rule of the games that are applied. Generally speaking, the three

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<sup>5</sup> David A. Sonnenfeld and Arthur P. J. Mol, 2002, 1318.

<sup>6</sup> Helmut Anheiner and Nuno Themudo, 2002, 2, 191-216.

elements (actors, boundaries, rules) have been shaped more comprehensively, leaving behind the rigid divisions and categories of the previous, often hierarchically-shaped, dimension. So that, in the global perspective, actors are expected to be multiform and to interact with each other with the necessary flexibility. Territorial and non-territorial borders have been fading away. The boundaries of the old distinction between the private and the public domains have blurred since the rules of the games are applied to the actors of the global arena regardless of their qualifications as "public" or "private."

### **THE INCLUSIVE APPROACH OF THE GLOBAL ACTORS**

While looking at the players in the global arena, we shall keep in mind Federman's metaphor of the shift from television to the Internet, with the effect of broadening the audience and modeling active participation. This involvement of the parties has produced significant changes by helping to re-think the actors' roles in the global arena. The players include both old and new actors, and both categories are significantly influenced by the pervasive limitless logic of the spherical dimension. In other words, players in the global arena have established new interconnections and therefore engaged in what the scholarship defined as "fairly predictable patterns of interactions." In this regard, the words of John Gerard Ruggie are illuminating:

This cluster of activity represents but one instantiation of a broader historic development — a newly emerging global public domain that is no longer coterminous with the system of states. I define the new global public domain as an institutionalized arena of discourse, contestation, and action organized around the production of global public goods. It is constituted by interactions among non-state actors as well as states. It permits the direct expression and pursuit of a variety of human interests, not merely those mediated (filtered, interpreted, promoted) by states. It 'exists' in transnational non-territorial spatial formations, and is anchored in norms and expectations as well as institutional networks and circuits within, across, and beyond states. [...]. These features vary across issue areas in ways we do not yet fully understand. The effect of the new global public domain is not to replace states, but to embed systems of governance in broader global frameworks of social capacity and agency that did not previously exist<sup>7</sup>.

There is more. As said, not only new interactions among actors but also new actors have crossed the threshold of the global arena. Besides states, it is worth mentioning the Inter-governmental organisations (IGOs), the independent administrative authorities (IAAs), and the non-governmental organisations (NGOs)<sup>8</sup>. The category is not exhaustive

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<sup>7</sup> Ibidem, 519.

<sup>8</sup> Morin, Jean-Frédéric, and Amandine Orsini, 2013, 15, 562-589, Margaret P. Karns, Karen A. Mingst, 2004.

since new formations are allowed to enter the global arena. Among the most significant examples of new aggregations of actors are the civic society movements, local and indigenous groups and any other group that, for historical, sociological, numerical reasons, falls in the category of the minority.

For this work, we will present a brief description of the IGOs, IAAs, and NGOs, and community-based engagements, followed by some practical examples of virtuous interactions in the Arctic community, in the last part of the contribution.

### **IGOs, IAAs, NGOs: DOORS OPEN TO NEW ACTORS**

According to the Union of International Associations (UIA), the term IGOs includes all organisations formed by at least three states active on a plurality of national territories<sup>9</sup>. The IGOs are created through a formal intergovernmental agreement, such as a treaty, a statute, or a charter. They aim to strengthen the cooperation and socialisation among states. Moreover, some IGOs play a role in settling disputes, establishing special procedures and facilitating compliance with international rules<sup>10</sup>. Generally speaking, their major role is to perform activities with the aim to solve major global problems, and this is the reason why the wide range of legal sectors covered by the global regulation is covered by the IGOs' activities: security, economy, health, and environment<sup>11</sup>.

To some extent, the Arctic Council shares the characteristics and the activities undertaken by the intergovernmental organisations, though with its own peculiarities, since its role has been confined so far in the realm of a peaceful platform between the Arctic states, with the aim to solve Arctic issues. One of the key questions for its future is to explore the possibility for the Arctic Council to become an IGO for all intents and purposes. Timo Koivurova seems to be in favour of the idea of a "strong institution" created via an international treaty, with strong decision-making powers<sup>12</sup>. The idea is to strengthen the legal approach in order to "shield the Arctic issues from changing government agendas and respond to the growing challenge from the broadening group of citizens and NGOs concerned about the state of the Arctic environment."<sup>13</sup>

An Arctic treaty establishing a binding Arctic law over the signatories is certainly a good starting point. But it is necessary to consider many hampering factors, such as the

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<sup>9</sup> See the official website: <http://www.uia.org/faq/yb3>.

<sup>10</sup> Eşref Ertürk, 2015, 333-341.

<sup>11</sup> Ibidem, 335.

<sup>12</sup> Timo Koivurova, 2016, 83-98.

<sup>13</sup> Ibidem, p. 96.

effects of the Arctic decisions over non-Arctic states and more, in general, the need for an extra coordination activity between the already existing binding and not binding agreements, within and outside the Arctic.

Another example of newly-shaped actors is the Independent Administrative Authorities (IAAs), that represent a classic example of non-state agencies supervising sensitive sectors, whose characteristics are organisational independence from governments, subjection to administrative law rules, as well as civil law rules (as in the case of liability), their quasi-judicial powers, as they can be addressed in case of controversies, playing an alternative role to the courts. Law creates them, and they are subject to it, and they are usually formed by a consistent group of technical experts. They are given powers over regulation but are also subject to controls by elected politicians and judges.<sup>14</sup>

The authorities called themselves independent but unfortunately have not always played as paladins of independence, impartiality, and detached status. Their expansion was labeled as the rise of the fourth branch of the government<sup>15</sup>, this way showing the quite close link to the government. Moreover, experience has shown some drawbacks in their functioning (one obvious example is the inability of the financial supervisory bodies to respond to the financial crisis in 2008<sup>16</sup>) and consequently the need to improve their mechanisms. Despite all, the independent administrative authorities have certainly paved a new way to the enlargement of the governance beyond the limits of the government. And the idea of technical bodies with neutral and discretionary power has certainly impacted the global regulatory scenario, by showing new potential cooperative networks between the old system of national governments and new cross-boundary bodies.

In this case, again, the Arctic Council shares some of the characteristics of the IAAs, for its specific purpose is to establish a peaceful platform for the Arctic region, having the protection of the environment at its core. A second possible function is if the conditions of shaping the AC as an IGO were not met, the Arctic Council would be structured as an authority with supervising powers over Arctic issues, mainly connected to

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<sup>14</sup> Mark Thatcher, 2002, 125-14. Among some of the most relevant studies on IAA see: Frank Vibert, 2014; Id., 2015; in Edoardo Chiti, 2004, 402-438.

<sup>15</sup> Jonathan Turley, 2013.

<sup>16</sup> Margherita P. Poto, 2011.



the environmental protection.

Finally, in the global arena, a dramatic impact on the global stage was marked when the NGOs stepped in as private and voluntary organisations whose members are individuals or associations that come together to achieve a common purpose<sup>17</sup>. In Manuel Castells' vision, NGOs are the hard-core of the global civil society, as they "claim to be the enforcers of unenforced human rights." In his analysis, three main features are to be highlighted when referring to NGOs vis-à-vis political parties: their considerable popularity and legitimacy, which translates into substantial funding via donations and volunteerism<sup>18</sup>. The majority of the scholarship agrees to include NGOs as the most active part of the civil society, with their contributions as agenda setters, conscience-keepers, lobbyists and good practice enforcers.<sup>19</sup>

Undoubtedly, the role played by the NGOs and especially by the environmental NGOs (e-NGOs) in the last half-century, has grown exponentially and has contributed to promoting civic awareness on sustainable development.

Despite the united opinions quoted above referring to NGOs as a civil society, we disagree with this vision, preferring to keep the category "civil society" open to any single or grouped actors that strive for the protection of fundamental rights otherwise infringed upon or neglected by the decision makers. The identification of NGOs- as a civil society is, therefore, too simplified and reductive. In the next paragraph, a wider description of civil society will be provided, including different civic movements aiming to raise social awareness on hot topics such as the one of sustainable development.

## ENGAGEMENT AT COMMUNITY LEVEL

While the current global political economy has not changed its capital accumulation perspective, the biophysical limits of the Earth make the "fight for a new ecological governance system [...] a fight for human survival"<sup>20</sup>. Within this context, it does not surprise that public demands for changes will rise, triggering the formation of citizen activism at the transnational level. Interestingly, this resistance framework to current globalization mirrors the attempt to

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<sup>17</sup> The Århus Convention marked a milestone in this regard: Eva Lohse, Margherita Poto, 2015.

<sup>18</sup> Manuel Castells, 2008, 85.

<sup>19</sup> Farhana Yamin, 2001, 149-162; Thomas Bernauer, Robert Gampfer, 2013, 439-449. For further references, see Sebastian Oberthür, Jacob Werksman, Matthias Buck, Sebastian Müller, Alice Palmer Dr. Stefanie Pfahl, Richard G. Tarasofsky, 2002, 1-150.

<sup>20</sup> Burns H. Wenston and David Bollier, 2013, *Green Governance. Ecological Survival, Human Rights, and the Law of the Commons*, Cambridge University Press, p. 262.



rebuild the global governance not only through institutional reforms but also, and mainly, through participation mechanisms, in transnational solidarity networks<sup>21</sup>. The ultimate objective of such networks would be the creation of multilateral governance with the potential of including ecological values, beyond market efficiency and purely economic growth.

As already stressed, we refuse the identification of civil society with NGOs that, despite being numerous and of a different kind, represent a professional type of resistance. Behind them, individuals and communities that try to give voice to their own local concerns are hidden. Reference to local communities here means that individuals see themselves as members of such communities that share a peculiar attachment with the area in which they are settled. Community-driven efforts to find answers to local concerns are of major interest in this article, as able as they are to address people's environmental priorities in a specific area, contributing from the bottom up to the reform of the global governance in terms of sustainability.

When talking about this kind of grassroots initiative, a *reductio ad unum* is not possible. Social movements differ in locations where they operate, structures, functioning, targets and ways in which they act - whether peacefully, through lobbying groups or direct mobilization of the population. Notwithstanding, the feature of "locality" is what mainly characterises them. On the one hand, ecological issues are influenced by local cultural frameworks, traditions, and history, on the other hand, the focus on "locality" makes it possible to realise that resources and capacities "to articulate an environmental discourse in civil society are unequally distributed."<sup>22</sup>

Element of strength of these social movements is their ability to remain stick to the communities they refer to, keeping at the bottom level, within the communities themselves, both power and authority. On the opposite, NGOs are likely to be perceived as mere intermediaries, lacking in legitimacy and representation<sup>23</sup>. Indeed, NGOs' international advocacy has weakened their relationships with local as well as national debate, with the result that on the one side they have gained a high profile within the international political arena but, on the other side, they are felt as inaccessible and

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<sup>21</sup> S. A. Hamed Hosseini, 2006. In this contribution, the author points out that alter-globalization's aim is "to put the totality of globalization on a genuinely democratic track" (p. 5) and that, "in contrast to both *reformism* and *revolutionism*, the alternative orientations raised by the alter-globalization movement focus on building parallel independent institutions not only for organizing actions but also for articulating new ideas, establishing democratically executable political-economic projects and alternative media" (p. 11).

<sup>22</sup> David A. Sonnenfeld and Arthur P.J. Mol, 2002), p. 1331.

<sup>23</sup> Michael Edwards, 2001. Id., 2000.

exclusive by many local activists. On the opposite, as social movements are underpinned by local communities, they can foster citizens' active political engagement, bringing together different opinions through productive dialogues. This way, they enhance ordinary people's power to influence policies that have a direct impact on them. The leading driver within this context is the need to find solutions that work. It is not a matter of individuals that participate in decisions only in self-interest, rather fairness and consequences of a single option on others have to be considered as well. This model of decentralised deliberation has the potential to "empower individuals," that whether "citizens or officials at the street level, may also know how best to improve the situation."<sup>24</sup>

Being open to the participation of ordinary citizens means to include disadvantaged individuals as well, taking into consideration those that are usually excluded from public decisions. Minority groups mirror this definition and constitute another example of diverse participation in the multiform global arena. Within the context of the Arctic region (that will be the focus of part II), talking about minority groups essentially means referring to local indigenous communities, who are affected by development processes and project planning. For this reason, involving local communities in environmental policy and management should be a primary scope and it should reflect the importance of including local knowledge as a support for public decisions<sup>25</sup>. However, barriers exist to the integration of local and traditional knowledge into mainstream governance. Among others, a dominant culture "that has historically privileged expert advice over other forms of knowledge."<sup>26</sup> Local communities' knowledge, instead, has the potential to enhance scientific knowledge with social and ethical insights, refining technical competences.

Many types of public participation exist, from negotiation practices that imply a limited collaboration degree to mechanisms of deliberative democracy<sup>27</sup>, characterized by

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<sup>24</sup> Archon Fung and Olin Wright, 2001, Deepening Democracy: Innovations in Empowered Participatory Governance, in *Politics & Society*, Vol. 29, No. 1, p.18.

<sup>25</sup> M.S. Reed, 2008, Stakeholder participation for environmental management: a literature review, in *Biology Conservation*, 141, pp. 2417–2431.

<sup>26</sup> Claudia F. Benham (2017), Aligning public participation with local environmental knowledge in complex marine social-ecological systems, in *Marine Policy*, Vol. 82, p. 16-17. The other main barriers mentioned by the author are: (i) the capacity of local communities to engage with decision making processes which require an investment of time and, often, substantial technical expertise; (ii) the inability of local knowledge to keep pace with change in social-ecological systems government reluctance to relinquish decision making power or to substantially amend or abandon projects in response to community concerns; (iii) the perceived risk of political deadlock over highly complex and contested environmental issues.

<sup>27</sup> For deeper understanding, please refer to: J. Hartz-Karp, 2005, A case study in deliberative democracy: dialogue with the City, in *Journal of Public Deliberation*, 1(1) 6; O. Barreteau, P. Bots, K. Daniell, 2010, A framework for clarifying "participation" in participatory research to prevent its rejection for the wrong reasons, in *Ecology and Society*, 15, 2; C.F. Benham, K. Daniell, 2016, Putting transdisciplinary research into

a high degree of power-sharing among government and parties<sup>28</sup>. Indeed, at the lowest level, basic communication practices between communities and policymakers can be deemed sufficient. At a higher level, some public input is required, with citizens' representatives taking part in the decision-making process itself. While "the lowest level involves top-down communication and one-way flow of information, [...] the highest level is characterised by dialogue and two-way information exchange"<sup>29</sup>. Depending on specific circumstances, the degree of communities' engagement is likely to change. Depending on the kind of participation method chosen, traditional knowledge can play a different role. Indeed, the way and the extent to which it is included in environmental policy decisions can change as well as the community's perception of the entire process of decision-making.

A community's participation that might be considered meaningful is underpinned by the coordination of available information about local communities. As a first step, this implies, on the one hand, sharing information about the community's "leadership, historical and current land uses and interests, and the history of any prior development on traditional lands." On the other hand, governments must consult as well as to manage such information<sup>30</sup>. This way, improved communication practices between minority and expert groups are likely to foster a deeper scientific awareness among the involved parties. Secondly, once the decision is made, local participation makes it easily implemented and more impactful<sup>31</sup>. Therefore, besides knowing that public involvement in technical policy issues is based on democratic principles<sup>32</sup>, the practical consideration that unpopular choices undermine social trust in governing bodies has played a crucial role<sup>33</sup>.

What has been said is especially true when it comes to environmental issues that directly affect people and their surroundings. Therefore, what follows will specifically

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practice: a participatory approach to understanding change in coastal social-ecological systems, in *Ocean Coastal Management*, 128, pp. 29–39.

<sup>28</sup> Claudia F. Benham (2017), Aligning public participation with local environmental knowledge in complex marine social-ecological systems, in *Marine Policy*, Vol. 82, p. 21.

<sup>29</sup> Jene Rowe and Lynn J. Frewer, 2000, Public Participation Methods: A Framework for Evaluation, in *Science, Technology, & Human Values*, 25, 3, p. 5.

<sup>30</sup> Aniek Udofia, Bram Noble, Greg Poelzer, 2017, Meaningful and efficient? Enduring challenges to Aboriginal participation in environmental assessment, in *Environmental Impact Assessment Review*, 65, p. 171.

<sup>31</sup> Frank Fisher, 2000, *Citizens, experts, and the environment. The politics of local knowledge*, Duke University Press, p. 217.

<sup>32</sup> See, for instance, Laird, F. N. 1993. Participatory analysis, democracy, and technological decision-making. In *Science, Technology, & Human Values* 18 (3), pp. 341-61 and R. M. Perhac, 1998, Comparative risk assessment: Where does the public fit in? in *Science, Technology, & Human Values* 23 (2), p. 221- 41.

<sup>33</sup> Kasperson, R. E., D. Golding, and S. Tuler, 1992, Social distrust as a factor in siting hazardous facilities and communicating risks, in *Journal of Social Issues*, 48, pp. 161-87.

address environmental concerns within the global arena and, after this, within the Arctic region.

Virtuous models of environmental governance have not been long in coming. In the second part of this work, we will analyse the role of the Arctic Council, as the cooperative platform where states and non-state actors cooperate adhering to the logic of the global dynamics (system of networks, community-based approaches facing common needs); and where plenty of room for new forms of cooperation and engagement is left, thanks to its flexible structure and its ability to accommodate new collaborative mechanisms.

A specific focus will be dedicated to the analysis of a harmonised system of environmental impact assessment's regulations, as well as a common pan-Arctic network to protect marine areas among the Arctic States, as examples of good governance tool that could enable the participation of non-State actors and more specifically of the indigenous communities that are potentially affected by the economic activities undertaken in the Arctic Region. The Arctic Council has been playing a key role in facilitating the harmonisation process, as well as in strengthening the role of non-State actors in environmentally-related decisions.

### **PART II A COMMUNITY-BASED RATIONAL DEVELOPMENT**

#### ***The starting block: Permanent Participants' Status for Arctic Indigenous Peoples***

In the seed stage, the Arctic Council was envisioned in Gorbachev's Murmansk speech on the October 1st, 1987<sup>34</sup>, where the then leader of the Soviet Union put great emphasis on the need to establish a peaceful platform for the Northern regions "to work out an overall concept of rational development of Northern areas."<sup>35</sup> The expression "rational development" suggests that development is to be intended in a comprehensive way and with social implications: the participation of the peoples living in the Arctic was, according to Gorbachev, crucial to guarantee a long-term strategic vision where the Northern areas have the potential to be underpinned as a common heritage for the population that lives there. This is how a development becomes rational, well-grounded and long-visioned.

By Gorbachev's expressed desire, and following his vision, the Arctic Council took

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<sup>34</sup> Mikhail Gorbachev, 1987, 23–31. The full text is available from the following URL: [https://www.barentsinfo.fi/docs/Gorbachev\\_speech.pdf](https://www.barentsinfo.fi/docs/Gorbachev_speech.pdf). See also David Scrivener, 1989; 2008, 289–311.

<sup>35</sup> Ibidem, p.5.

the form of a platform of peace for the Northern regions, with the aim to facilitate the cooperation among the interested parties, and in doing so, it included not only the Arctic States but also representatives of non-State actors, such as the Arctic indigenous peoples. In this sense, the Arctic Council acknowledges that the first and original form of participation is grounded on the formal recognition of parties to the indigenous groups that are involved in environmental decisions.

In line with it, the AC was established on September 19<sup>th</sup>, 1996, to strengthen the regional cooperation among the Arctic countries<sup>36</sup>: composed by eight-member states<sup>37</sup>, it had the novelty of including indigenous organisations as permanent participants<sup>38</sup>.

The Arctic Council marks the first virtuous example of an intergovernmental forum where the indigenous peoples are regarded as partners around the negotiating table and have the right of prior consent, hearing, and participation<sup>39</sup>. The effectiveness of their participation is still an ongoing process since indigenous groups do not have a say on the final decisions yet. '

The longing for a wide spectrum of participatory tools has been fulfilled over the years, with international and national measures that in different fields have made the participation a pillar of good administrative practices, from the examples of participated environmental impact assessments that equally inform the Northern countries legal provisions, to the project of setting up a transboundary network of MPAs where the interested parties not only participate in the decisions but also are co-managers of the common resources.

In the following paragraphs, an analysis of other even more meaningful and focused on environmental decisions-tools of participation will be provided, with a focus on the participation in the environmental impact assessments and on the co-management of

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<sup>36</sup> Declaration on the Establishment of the Arctic Council, 35 I.L.M. 1387, Sept. 19, 1996. See David L. VanderZwaag, 2014 in Tim Stephens and David L. VanderZwaag (ed. by), 2014, 30.

<sup>37</sup> The state members of the AC are: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America.

<sup>38</sup> The state members of the AC are: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America.

<sup>39</sup> Jenks, A., cit. supra. Currently, six indigenous organisations have permanent participant status: Aleut International Association, Arctic Athabaskan Council, Gwich'in Council International, Inuit Circumpolar Council, Association of Indigenous Peoples of North (RAIPON) and the Saami Council in Arctic Council "Permanent Participants" <http://www.arctic-council.org/index.php/en/about-us/permanent-participants> accessed 15 July 2016. Observer status in the Arctic Council is open to non-Arctic states, intergovernmental and inter-parliamentary organisations, and non-governmental organisations (NGOs).

marine protected areas.

### **ENVIRONMENTAL IMPACT ASSESSMENTS IN THE ARCTIC STATES: STRENGTHS AND WEAKNESSES**

The harmonisation of administrative, procedural law in the Northern countries certainly benefited from the implementation of generalised international standards regarding environmental decisions, and probably the public participation in Environmental Impact Assessments (EIAs) best represents one of the highest peaks towards the full engagement of the interested parties in environmentally-related decisions.

Comprehensive studies on the EIA's process in the Arctic Regions have shown that the public participation mechanisms strongly endorsed at international level have been implemented quite effectively in the countries of the Barents Euro-Arctic Region, with the resulting in a forum for all affected parties to list and be heard in the environmental decisions<sup>40</sup>.

The lesson that the participatory right in EIAs teaches is that the protection of procedural rights is a necessary milestone in recognition of fundamental rights, such as the right to a healthy and safe environment, as well as the right to preserve traditional knowledge and cultural heritage.

Scholarship projections as far as the EIA procedures in the Arctic are concerned, is that the Arctic Council might provide a conducive ground for the future use of EIAs and strategic assessments, due to its flexible institutional framework<sup>41</sup>. Arctic good practice exchange seems to be the right approach to be followed, as well as the establishment of a sub-body of government agencies, representatives from indigenous peoples organisations, and experts in the field.

### **THE MPAS NETWORK: TOWARDS A NEW MODEL OF ENVIRONMENTAL GOVERNANCE**

Similar to what is happening in the EIAs procedures, an international regulatory framework for marine protected areas seems to be coming to light. The logic is the same: create a solid yet flexible enough structure, where the representative of all the interested parties have a say and a role as participants in decisions related to the protection of the marine environment. Moreover, the case of MPAs has a further and original element, which consists of the effective involvement of representative groups (i.e., indigenous) in the phase following the decision-

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<sup>40</sup>Nenasheva, M.; Bickford, S. H., Lesser, P.; Koivurova, T.; Kankaanpää, P., 2015, 13-35; Sander G., 2016. 88-119.

<sup>41</sup> Koivurova T., Lesser P., 2016; Bastmeijer K., Koivurova T., 2008.



making, that is to say, in the common share and management of the areas designated for the protection.

In 2015, the Arctic Council established a framework for a Pan-Arctic network of marine protected areas (MPAs). Such initiative responded to the logic to provide a solution at the global level to the urgency of protecting and restoring marine biodiversity, ecosystem function and special natural features as well as of preserving cultural heritage and subsistence resources for the current and future generations<sup>42</sup>.

The growing preoccupation expressed by the Arctic coastal communities about the impacts of environmental changes on their livelihoods and well-being compelled the Arctic Council community to promote the establishment and follow the consolidation of the Pan-Arctic network. It also and triggered cooperation to protect the coastal and offshore marine biodiversity in light of contrasting the environmental changes. The scope of the Pan-Arctic network strongly supported by the Arctic Council is reasonably in line with the Aichi targets<sup>43</sup> that followed the Convention on Biodiversity, in its encouragement of implementing biodiversity protection dictates in an inclusive and participatory mode, where both the Arctic Council Member States and the local and indigenous communities are engaged in the decision-making processes that impact their livelihoods.

The ambitious project seems to be still in a drafting stage, but it is commendable that a well-designed and functioning MPA network could work as a trigger for multilevel cooperation between the different actors engaged in the protection of the marine environment<sup>44</sup>.

### CONCLUSIONS.

The different forms of participation that are granted to non-state actors in environmental

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<sup>42</sup> See Framework for a Pan-Arctic Network of Marine Protected Areas, A Network of Places and Natural Features Specially-managed for the Conservation and Protection of the Arctic Marine Environment, 2015, available at [http://arcticjournal.com/sites/default/files/mpa\\_final\\_web.pdf](http://arcticjournal.com/sites/default/files/mpa_final_web.pdf), visited in August 2017, p. 1-52.

<sup>43</sup>The Convention on Biodiversity is a milestone in the process of granting an international protection to biodiversity, by applying an integrated and rights-based approach. The CBD parties have developed a long-term strategy to facilitate and encourage the implementation process: two protocols have followed its approval; six working groups have been established to implement its mission; six types of mechanisms of enforcement have been established; six lines of cooperation have been identified; and finally, in 2010 a Strategic Plan for Biodiversity 2011-2020 was set up under CBD premises: The Strategic Plan for Biodiversity 2011-2020 was conceived as a framework not only for the biodiversity-related conventions, but for the UN system as a whole. The plan consists of 20 Aichi Biodiversity Targets, organised under five Strategic Goals. The reference in the text is in particular to Target n. 11, that relates the importance of undertaking cooperative efforts to the need of limiting and conserving protected areas. For further details see Ingvild Ulrikke Jakobsen, Margherita Paola Poto, *Biodiversity conservation in the Arctic: the Norwegian perspective*, in *Environmental Liability: Law, Policy and Practice*, 2016, f. 6.

<sup>44</sup> *Ibidem*, p. 20.



decisions represent only one angle of a wider global phenomenon. Yet, it is true that the global village is always a local village, in the end. This is the reason why the dynamics in place at a local level can be regarded as valid for any models of capacity building and community empowerment worldwide. The various dimensions of capacity comprise participation, leadership, social supports, sense of community, access to natural resources.

In the article, the ongoing process of indigenous participation in the Arctic has been described in its progressive pattern, from the formal recognition of the status of indigenous groups as permanent participants in an intergovernmental forum to the opening toward the indigenous support in case of environmental impact assessments, and finally to models of co-management in the establishment and administration of common protected areas, as it is happening in the case of MPAs networking. The community-based approach is central to the concept of sustainable development, defined as "a community-based process directed toward achieving optimum states of human and environmental well-being without compromising the interests of other people, at other times and places to do the same."<sup>45</sup> Building up a global community based on the principles of participation, equality and respect for the environment not only responds to the inner scope of sustainable development, but it also contributes to offering a moral compensation and an adequate level of protection to marginalised groups, healing the wounds and restoring the injustice they suffered because of assimilation policies, which had devastating effects on their community bonds.

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<sup>45</sup> Wismer, S. 1990.

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